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20 JIPC Management, Inc.

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 JIPC MANAGEMENT, INC.,  
24 Plaintiff,

25 v.

26 INCREDIBLE PIZZA CO., INC. and  
27 INCREDIBLE PIZZA FRANCHISE  
28 GROUP, LLC;  
Defendants.

Case No. CV08-04310 MMM  
(PLAx)

FIRST AMENDED COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:

- (1) FEDERAL TRADEMARK INFRINGEMENT;
- (2) FEDERAL UNFAIR COMPETITION;
- (3) CALIFORNIA TRADEMARK INFRINGEMENT;
- (4) COMMON LAW TRADEMARK INFRINGEMENT; AND
- (5) CALIFORNIA TRADE NAME INFRINGEMENT;

DEMAND FOR JURY TRIAL

STOEL RIVES LLP  
ATTORNEYS AT LAW  
PORTLAND

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF

-1-

PortInd2-4702177.2 0061355- 00004

1 Plaintiff JIPC Management, Inc., for its Complaint against defendants  
 2 Incredible Pizza Co., Inc. and Incredible Pizza Franchise Group, LLC hereby  
 3 alleges as follows:

4 **I. PARTIES**

5 1. Plaintiff JIPC Management, Inc. ("JIPC") is a California corporation  
 6 with a principal place of business at 1 Orchard Road, Suite 135, Lake Forest,  
 7 California 92630. JIPC's business is the licensing and management of restaurants  
 8 offering all-you-can-eat buffets of pizza, pasta, salad, and dessert, in an  
 9 entertainment complex featuring theme rooms, video games, redemption games,  
 10 miniature golf, bumper cars, and go-karts under the distinctive JOHN'S  
 11 INCREDIBLE PIZZA CO. and INCREDIBLE PIZZA CO. marks, among others.

12 2. On information and belief, defendant Incredible Pizza Co., Inc.  
 13 ("IPC") is a Missouri corporation with a principal place of business at 1835 E  
 14 Republic Road, Suite 102, Springfield, Missouri 65804. IPC's business is, on  
 15 information and belief, the management of restaurants offering all-you-can-eat  
 16 buffets of pizza, pasta, salad, and dessert, in an entertainment complex featuring  
 17 theme rooms, video games, redemption games, miniature golf, bumper cars, and  
 18 go-karts under the infringing INCREDIBLE PIZZA COMPANY, INCREDIBLE  
 19 PIZZA.COM and AMERICA'S INCREDIBLE PIZZA COMPANY marks.

20 3. On information and belief, defendant Incredible Pizza Franchise  
 21 Group, LLC ("IPFG") is a Missouri limited liability company with a principal place  
 22 of business at 2772 S Campbell Avenue, Springfield, Missouri 65807. IPFG is, on  
 23 information and belief, the franchising arm of IPC. According to IPFG's literature,  
 24 IPFG is, on information and belief, in the business of franchising family  
 25 entertainment centers including an all-you-can-eat buffet, themed dining, private  
 26 party rooms, and an entertainment area containing games, rides, and attractions that  
 27 will operate under the name INCREDIBLE PIZZA COMPANY.  
 28

## II. JURISDICTION AND VENUE

4. This is an action arising under the federal Lanham Act, 15 U.S.C.

§§ 1051-1127. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity of citizenship), 15 U.S.C. § 1121 (actions arising under the Lanham Act), and 28 U.S.C. § 1338 (acts of Congress relating to trademarks and unfair competition).

5. The Court has personal jurisdiction over defendants because they transact business in California and have purposefully directed their activities at California or its residents and JIPC's claims arise out of those activities.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

## III. FACTS COMMON TO ALL COUNTS

### A. JIPC's Trademark Rights.

7. JIPC owns the following and other federally registered service marks, which were granted by the U.S. Patent and Trademark Office (the "USPTO") and appear on its Principal Register:

Mark	Reg. No.	Reg. Date	Services
JOHN'S INCREDIBLE PIZZA CO.	3,025,377	12/13/2005	International Class ("IC") 43: Restaurant services
JOHN'S INCREDIBLE PIZZA CO.	3,058,427	02/14/2006	IC 41: Entertainment services, namely, providing play areas, miniature golf, laser tag, electric go-karts, bumper cars, bowling, arcade games, prize redemption games, and arcade rides; providing coin-operated video games in the nature of an amusement arcade; providing continuous music video, prerecorded video broadcasts via television; and providing live entertainment in the nature of karaoke contests

Mark	Reg. No.	Reg. Date	Services
JOHN'S INCREDIBLE PIZZA CO. ALL YOU CAN EAT FOOD & FUN (and design)	3,061,612	02/28/2006	IC 43: Restaurant services
JOHN'S INCREDIBLE PIZZA CO. ALL YOU CAN EAT FOOD & FUN (and design)	3,099,682	06/06/2006	IC 41: Entertainment services, namely, providing laser tag, electric go-karts, bumper cars, arcade games, prize redemption games, and arcade rides; and providing coin-operated video games in the nature of an amusement arcade

True and correct copies of JIPC's above federal registrations are attached hereto as Exhibits 1-4.

8. JIPC also owns the following and other service marks registered with the California Secretary of State:

Mark	Reg. No.	Reg. Date	Services
JOHN'S INCREDIBLE PIZZA CO.	058668	01/21/2004	International Class ("IC") 42: Restaurant services
JOHN'S INCREDIBLE PIZZA CO.	059016	04/12/2004	IC 41: Entertainment services
JOHN'S INCREDIBLE PIZZA CO. ALL YOU CAN EAT FOOD & FUN (and design)	059018	04/12/2004	IC 42: Restaurant services
JOHN'S INCREDIBLE PIZZA CO. ALL YOU CAN EAT FOOD & FUN (and design)	059015	04/12/2004	IC 41: Entertainment services

True and correct copies of JIPC's above California registrations are attached hereto as Exhibits 5-8.

9. JIPC's registrations noted in Paragraphs 7 and 8 above are valid and subsisting and constitute prima facie evidence of JIPC's ownership of the JOHN'S INCREDIBLE PIZZA CO. and JOHN'S INCREDIBLE PIZZA CO. ALL YOU

1 CAN EAT FOOD & FUN (and design) marks and of JIPC's exclusive right to use  
2 the same in connection with the services set forth in said registrations.

3 10. JIPC has also filed Application Serial Nos. 78/435,085 and 78/435,080  
4 seeking registration for the service mark INCREDIBLE PIZZA CO. in IC 43 and  
5 41, respectively.

6 11. JIPC also owns common-law rights in the marks identified in  
7 Paragraphs 7, 8 and 10 above, as well as trade name rights in JOHN'S  
8 INCREDIBLE PIZZA CO., based on the continuous use by JIPC and its  
9 predecessors.

10 12. The JOHN'S INCREDIBLE PIZZA CO. mark and name and the  
11 INCREDIBLE PIZZA CO. mark were first used in commerce for restaurant  
12 services and entertainment services at least as early as September 1997 by JIPC's  
13 predecessor and have been continuously used in commerce since 1997 by JIPC and  
14 its predecessor and licensees.

15 13. The JOHN'S INCREDIBLE PIZZA CO. ALL YOU CAN EAT  
16 FOOD & FUN (and design) mark was first used in commerce for restaurant  
17 services and entertainment services at least as early as March 2002 by JIPC and has  
18 been continuously used in commerce by JIPC and its licensees since then.

19 14. The adoption of the JOHN'S INCREDIBLE PIZZA CO.,  
20 INCREDIBLE PIZZA CO., and JOHN'S INCREDIBLE PIZZA CO. ALL YOU  
21 CAN EAT FOOD & FUN (and design) marks and the JOHN'S INCREDIBLE  
22 PIZZA CO. name (collectively, the "INCREDIBLE Marks") by JIPC and its  
23 predecessor was in good faith and was the first use of these marks and name in  
24 association with restaurant and entertainment services.

25 15. The INCREDIBLE Marks have never been merely descriptive of the  
26 services provided by JIPC in association with the marks. As such, no secondary  
27 meaning is required for the INCREDIBLE Marks to be valid and enforceable  
28 against later users of infringing marks.

1           16. JIPC has spent tens of thousands of dollars annually in the promotion  
 2 and advertisement of its business, products and services identified and  
 3 distinguished by the INCREDIBLE Marks. By reason of such substantial  
 4 promotion and advertising and the high quality of its business, products and  
 5 services bearing the INCREDIBLE Marks, JIPC has attained and now enjoys a  
 6 valuable good will and an enviable reputation in the marketplace with respect to its  
 7 marks and its business, products, and services. The relevant public has come to  
 8 know, rely on, and associate the INCREDIBLE Marks with a single source, namely  
 9 JIPC, and to recognize JIPC's business and services by its marks and name.

10           17. JIPC has at all times since adoption exercised exclusive control of the  
 11 INCREDIBLE Marks as used in association with restaurant and entertainment  
 12 services.

13 **B. The Success and Expansion of JOHN'S INCREDIBLE PIZZA CO.**

14           18. John Parlet is the founder, president, and chief executive officer  
 15 ("CEO") of JIPC. Parlet has owned and operated restaurants, including pizza  
 16 restaurants, since the early 1970s. Parlet also founded a software company to  
 17 develop and market a proprietary pizza order entry and management system—  
 18 known as RapidFire—for use in the pizza industry.

19           19. Drawing on all that he had learned about the pizza and entertainment  
 20 business in his more than 20 years in the pizza industry and on his travels across the  
 21 country selling the RapidFire system to pizza restaurants, Parlet began developing  
 22 the JOHN'S INCREDIBLE PIZZA CO. concept in or about 1995. When it came  
 23 time to select a name for his new restaurants, Parlet coined the term JOHN'S  
 24 INCREDIBLE PIZZA CO. Parlet chose JOHN'S INCREDIBLE PIZZA CO.  
 25 because the term conveyed a sense of mystery and excitement that Parlet believed  
 26 would attract the interest of potential customers.

27           20. On June 3, 1997, Parlet incorporated John's Incredible Pizza Co., Inc.  
 28 ("JIPC, Inc.") in California.



1           21. On or about September 12, 1997, JIPC, Inc. opened the first JOHN'S  
2 INCREDIBLE PIZZA CO. store in Victorville, California.

3           22. At the time it opened, the Victorville JOHN'S INCREDIBLE PIZZA  
4 CO. store featured (as it does today) an all-you-can-eat buffet, including pizza,  
5 pasta, salad, and dessert; seating capacity for 300 in three themed dining rooms—a  
6 cartoon-themed room, a sports-themed room, and a "quiet" room with a fireplace  
7 for those who want to enjoy a peaceful meal in a relaxed setting; and an  
8 entertainment center featuring a large game room with video games, redemption  
9 games and prizes, bumper cars, and eight private rooms for hosting birthday parties  
10 and other group events.

11           23. The Victorville JOHN'S INCREDIBLE PIZZA CO. store was and  
12 immediate success and within two or three weeks of opening, customers were lined  
13 up out the door each weekend night waiting to get in.

14           24. The launch of the Victorville store was followed by the opening of  
15 seven additional JOHN'S INCREDIBLE PIZZA CO. stores in California:  
16 Bakersfield (November 1998), Fresno (June 2000), Stockton (August 2002),  
17 Modesto (July 2003), Montclair (January 2005), Roseville (March 2007) and  
18 Riverside (November 2007). A ninth JOHN'S INCREDIBLE PIZZA CO. store is  
19 scheduled to open in Buena Park, California in early 2009.

20           25. Each JOHN'S INCREDIBLE PIZZA CO. store has continuously  
21 offered, under the INCREDIBLE Marks, all-you-can-eat buffets of pizza, pasta,  
22 salad, and dessert, in an entertainment complex featuring theme rooms, video  
23 games, redemption games, and other kinds of activities such as miniature golf,  
24 bumper cars, and go-karts.

25           26. On or about March 31, 1999, JIPC, Inc. assigned its rights in the  
26 JOHN'S INCREDIBLE PIZZA CO. and INCREDIBLE PIZZA CO. names and  
27 marks to JIPC, together with all associated good will. Since at least March 31,  
28 1999, JIPC has managed and licensed the operation of each JOHN'S INCREDIBLE

1 PIZZA CO. store under the JOHN'S INCREDIBLE PIZZA CO. and INCREDIBLE  
2 PIZZA CO. names and marks.

3 **C. Rick Barsness's Background as a Mr. Gatti's Franchisee.**

4 27. On information and belief, Richard ("Rick") Barsness is founder,  
5 CEO, and, together with his wife, Cheryl, owner of defendant IPC. On information  
6 and belief, Rick and Cheryl Barsness are also managers of and own a controlling  
7 interest in defendant IPFG, which describes itself as an affiliate of IPC.

8 28. Starting in the 1970s, Barsness (or companies controlled by him)  
9 owned and operated franchised pizza restaurants in Texas under the mark  
10 MR. GATTI'S. By the early to mid-1990s, some of the Mr. Gatti's restaurants  
11 featured all-you-can-eat buffets of pizza, pasta, salad, and dessert in an  
12 entertainment complex featuring theme rooms, video games, redemption games,  
13 and other kinds of activities.

14 **D. Barsness Learns of Parlet's Plans to Use the JOHN'S INCREDIBLE**  
15 **PIZZA CO. Name.**

16 29. Barsness and Parlet first became acquainted in the mid-1990s, when  
17 Barsness bought Parlet's RapidFire order management system for use in Barsness's  
18 Mr. Gatti's restaurants. Barsness and Parlet struck up a professional friendship in  
19 which they discussed, from time to time, the pizza restaurant industry and  
20 exchanged ideas and concepts for their respective businesses.

21 30. In or about 1995 or 1996, Parlet disclosed to Barsness that Parlet  
22 planned to open a chain of all-you-can-eat buffets of pizza, pasta, salad, and dessert  
23 in an entertainment complex under the name JOHN'S INCREDIBLE PIZZA CO.  
24 From time to time thereafter, Parlet would discuss ideas he had for the JOHN'S  
25 INCREDIBLE PIZZA CO. concept with Barsness. However, at no time did Parlet  
26 discuss Barsness's use of the INCREDIBLE PIZZA CO. name with Barsness or  
27 agree that Barsness could use the INCREDIBLE PIZZA CO. name or any variant  
28 thereon.



**E. Barsness Visits the Victorville JOHN'S INCREDIBLE PIZZA CO.**

**31. Barsness knew about the Victorville JOHN'S INCREDIBLE PIZZA**

**CO. when it opened in September 1997. Only a few months before the Victorville store opened, one of Barsness's longtime managers, Ron Jones, quit to go work for Parlet in Victorville. Although Jones informed Barsness that he had approached Parlet about the position on his own initiative, Barsness remained upset and offended that Parlet had hired Jones. As Barsness told L.D. Brinkman, the president of Mr. Gatti's restaurants at the time, Barsness was "pissed off" about Parlet's hiring Jones. Based on Jones's hiring, Barsness believed he and Parlet were no longer friends and, from that point on, Barsness claimed he no longer trusted Parlet.**

**32. Despite his anger at Parlet, Barsness went to the Victorville JOHN'S INCREDIBLE PIZZA CO., purportedly out of "curiosity," in or about late 1997. While he was there, Barsness saw that the Victorville store had a buffet featuring pizza, pasta, salad, and dessert, as well as a game room featuring video games and redemption games, and saw the JOHN'S INCREDIBLE PIZZA CO. name displayed on the store. Barsness continued to keep track of Parlet's plans for the chain through the industry "grapevine" and knew that Parlet was expanding.**

**33. In late 1997 or the first half of 1998, Barsness sent Larry Abbe, the manager of Mr. Gatti's franchises in Abilene, Texas, to Victorville for a week to pick up and receive training on certain sauces and pizza crust recipes that Parlet had agreed to sell to Barsness. Parlet had agreed to sell the recipes to Barsness based on Barsness's representation that he planned to sell his Mr. Gatti's franchises and open his own restaurants and wanted recipes from another source so Mr. Gatti's could not accuse Barsness of stealing its proprietary recipes. Barsness never advised Parlet that Barsness was planning to use the INCREDIBLE PIZZA CO. name in connection with Barsness's new restaurant.**

**F. Barsness's Bad-Faith Appropriation of the INCREDIBLE PIZZA CO. Name.**

34. Starting in 1996, Rick and Cheryl Barsness began talking about terminating the franchise relationship with Mr. Gatti's and opening their own pizza restaurant in a state where there were no Mr. Gatti's with which to compete.

35. On or about April 6, 1998, Barsness informed Mr. Gatti's that he wished to sell all of his Mr. Gatti's restaurants, leave the Southwest, and move to Springfield, Missouri to open his own pizza restaurants. In discussing the process of disposing of his franchises and his future plans with Mr. Gatti's, Barsness acknowledged that he had "seen the John's Incredible restaurant in Victorville" and was aware of Mr. Gatti's concerns that the Victorville restaurant might violate Mr. Gatti's trade dress (a charge Mr. Gatti's never raised with, or asserted against, JIPC).

36. By mid-1998, Barsness had begun selling his Mr. Gatti's franchises and had purchased a place to live in Rogersville, Missouri.

37. By no later than October 1998, Barsness had decided to name his new restaurant INCREDIBLE PIZZA CO. and began working with a designer to develop a logo for the proposed restaurant. At the time, Barsness was aware that Parlet was using the JOHN'S INCREDIBLE PIZZA CO. name, as well as of the possibility that Parlet was going to expand outside of California. Although Barsness could have chosen from an unlimited number of other names, Barsness never considered any name other than INCREDIBLE PIZZA CO.

38. In or about September 1999, Barsness told Madison Scott, a local Texas businessman who was considering the purchase of Barsness's Amarillo, Texas Mr. Gatti's franchises, that "[t]here's something out of California that's called John's Incredible Pizza Company, and he [Barsness] was thinking himself of doing an Incredible Pizza Company." Barsness also told Scott that JIPC was "doing extremely well up there [and] that it had grown by four or - - you know,

1 they'd gone to four stores or something by now." Barsness also told Scott that he  
 2 had obtained a "delicious pizza recipe" from JOHN'S INCREDIBLE PIZZA CO.  
 3 that could be used in connection with his INCREDIBLE PIZZA CO. restaurant.

4 39. On or about September 21, 1999, Barsness filed with the USPTO  
 5 Application Serial No. 75/805,643 (the "'643 Application") to register  
 6 INCREDIBLE PIZZA CO. (and design) on an intent to use basis in IC 42 for  
 7 restaurant services.

8 40. The '643 Application was supported by a declaration executed by  
 9 Barsness on September 20, 1999. In his declaration, Barsness (after acknowledging  
 10 that he had been warned that willful false statements were punishable by fine,  
 11 imprisonment, etc.) stated that he believed himself to be entitled to use the  
 12 INCREDIBLE PIZZA CO. (and design) mark in commerce and that to the best of  
 13 his knowledge and belief "no other person, firm, corporation, or association has the  
 14 right to use said mark in commerce, either in the identical form or in such near  
 15 resemblance thereto as may be likely, when applied to the goods of such other  
 16 person, to cause confusion, or to cause mistake, or to deceive."

17 41. At the time Barsness executed his declaration, he understood that  
 18 Parlet and his company were using, and had the right to use, the name JOHN'S  
 19 INCREDIBLE PIZZA CO. in connection with restaurant services. Indeed,  
 20 approximately three weeks later, Barsness represented in a letter to Scott dated  
 21 October 14, 1999 that with regard to the INCREDIBLE PIZZA CO. name,  
 22 "someone else is operating under that name and concept in California." Barsness  
 23 has subsequently admitted under oath that the "someone else" indicated in the letter  
 24 was a reference to Parlet and the JOHN'S INCREDIBLE PIZZA CO. restaurants.

25 **G. Parlet Hears About and Objects to Barsness's Plans to Use the**  
 26 **INCREDIBLE PIZZA CO. Name.**

27 42. In or about October 1999, Parlet heard a rumor that Barsness was  
 28 planning on opening a restaurant in Texas using the INCREDIBLE PIZZA CO.

1 name. Parlet immediately called Barsness and objected to Barsness's proposed use  
2 of the name on the grounds that it would be confusingly similar to JIPC's JOHN'S

3 INCREDIBLE PIZZA CO. name. Parlet also demanded that Barsness choose a  
4 different name for any restaurant concept he might pursue. At no time did Barsness  
5 reveal to Parlet that Barsness had filed an application to register the INCREDIBLE  
6 PIZZA CO. (and design) mark with the USPTO.

7 **H. Barsness's Bad-Faith Incorporation of IPC.**

8 43. On December 23, 1999, Barsness incorporated IPC under the name  
9 "Incredible Pizza Co., Inc.," with full knowledge of JIPC's prior use of the JOHN'S  
10 INCREDIBLE PIZZA CO. mark and its objection to Barsness's use.

11 **I. Barsness Asks Parlet's Permission to Use the INCREDIBLE PIZZA CO.  
12 Name in "Some Part of the Country" and Parlet Refuses**

13 44. On or about May 3, 2000, Barsness called Parlet and secretly recorded  
14 their conversation without informing Parlet. The tape was subsequently  
15 transcribed. Toward the end of the conversation, Barsness's brought up the  
16 objections Parlet previously raised to Barsness's use of the INCREDIBLE PIZZA  
17 CO. name:

18 MR. BARSNESS: \* \* \* The other thing was, John,  
19 do you and I need to talk anymore about the name issue?

20 MR. PARLET: Not as long as—you know where  
21 I'm coming from on that, Rick. I asked you not to use the  
22 name and I'll continue asking you not to use the name.  
23 There's a million names out there, you can pick anything.  
24 But John's Incredible Pizza Company is a name that I use  
25 and I don't know—who knows whether I'm going to go  
26 nationwide or where I'm going.

27 MR. BARSNESS: I understand that, you know,  
28 position. I hope that you understand, you know, the

1 thoughts that I had when we went into investing the  
2 money to create the logo and everything we did. I  
3 thought that you and I had an understanding. Obviously  
4 you didn't you know, think the same way.

5 MR. PARLET: Right.

6 MR. BARSNESS: And I wish to God I would have  
7 called you before we invested all the money and stuff and  
8 energy into that issue. But I mean it's done, it's past, it's  
9 spent and I would still like to come to terms with you  
10 somehow on that issue if we could break apart some part  
11 of land or some part of the country and say, you know,  
12 "Okay, Rick, it's all right for you to use the name in this  
13 part of the country and I'll use it over in this part of the  
14 country." That's the deal I thought we had in the first  
15 place. And obviously you didn't think so.

16 MR. PARLET: Right.

17 MR. BARSNESS: But if we could come to  
18 terms—quite frankly, I miss your friendship.

19 MR. PARLET: Well, I miss talking to you too  
20 Rick. You obviously have no intention of changing and I  
21 know I ain't changing. \* \* \* I asked you before about  
22 the Amarillo switch over to consider any other name but  
23 that. You said you didn't want to so we are very much—  
24 there's no room for discussion on it, Rick.

25 MR. BARSNESS: I think it was too late at that  
26 time with everything—the ball was already rolling and it  
27 would have taken --

28 MR. PARLET: Well, pick a new name out and go

1 forward.

2 MR. BARSNESS: Well, we can discuss that, you  
3 know, John. There—is there just no room at all for me to  
4 have some part of the country and use the name where  
5 you and I can get together on it, a small piece of real  
6 estate anywhere?

7 MR. PARLET: No, I'm being pretty narrow  
8 minded on that one, Rick.

9 \* \* \* \*

10 MR. BARSNESS: \* \* \* I wouldn't want to take  
11 anything from anybody. I never have in my life, ever. I  
12 like to consider myself independent. And I don't want to  
13 get back on – the whole reason I came out from Gatti's is  
14 so I could be independent. That's the way I want to be.

15 MR. PARLET: I wish you well in it. Just pick  
16 another name, I'll wish you more well, it's just that  
17 simple.

18 MR. BARSNESS: Well, I think we are headed in  
19 that direction. I don't want you to think that I'm not  
20 absolutely not headed in that direction. If I thought that  
21 you and I could get our relationship back by doing that,  
22 then I think that it certainly could be considered if there  
23 would be a little bit of movement on each person's part.  
24 If you could consider a little bit of movement then we  
25 certainly, I think, can discuss this some more at your  
26 convenience.

27 MR. PARLET: There ain't nothing to move on my  
28 end, Rick, it's very simple.



1 MR. BARSNESS: Okay. And I'll tell you, John,  
2 that we are considering that. Okay.

3 45. Despite his repeated assurances to Parlet, however, Barsness took no  
4 further action to select a different name. To the contrary, Barsness moved forward  
5 with plans to open his own all-you-can-eat pizza, pasta, salad, and dessert buffet  
6 restaurant and family entertainment center under the INCREDIBLE PIZZA CO.  
7 name in Springfield, Missouri.

8 **J. Barsness Falsely Represents His Use of the INCREDIBLE PIZZA CO.**  
9 **(and Design) Mark to the USPTO.**

10 46. On March 23, 2001, in response to the USPTO's notice of allowance  
11 of the '643 Application, Barsness filed a Statement of Use under 37 C.F.R. § 2.88  
12 ("Statement of Use"), which stated that "[a]pplicant is using the mark in commerce  
13 on or in connection with the goods/services identified in the Notice of Allowance"  
14 and which provided November 2000 as the date of first use and date of first use in  
15 commerce. The Statement of Use was supported by a declaration executed by  
16 Barsness on February 22, 2001, in which Barsness affirmed that the "mark is now  
17 in use in commerce," and that all statements made in the Statement of Use were  
18 true (or if made on information or belief, believed to be true).

19 47. Barsness's representation that he was using the INCREDIBLE PIZZA  
20 CO. (and design) mark in commerce was, on information and belief, knowingly  
21 false at the time it was made.

22 48. On October 23, 2001, the USPTO issued to Barsness federal  
23 Registration No. 2,500,872 for the mark INCREDIBLE PIZZA COMPANY  
24 GREAT FOOD, FUN, FAMILY & FRIENDS (and design) in IC 42 for restaurant  
25 services. On information and belief, Barsness subsequently assigned ownership of  
26 Registration No. 2,500,872 to IPC.  
27  
28

**K. Barsness's Bad-Faith Registration of the Incrediblepizza.com Domain.**

49. On information and belief, on or about December 3, 2001, Barsness, acting on behalf of IPC, registered or purchased the Internet domain name incrediblepizza.com and caused it to be registered in the name of IPC with the prior knowledge of, and bad-faith intent to profit from, JIPC's INCREDIBLE Marks.

50. On information and belief, on or about July 21, 2002, IPC posted an Internet Web page at the Uniform Resource Locator ("URL") www.incrediblepizza.com that read "Welcome to Springfield's Incredible Pizza Co." and offered "behind the scenes peek at the restaurant construction currently under way, our contact information, and the Incredible Pizza Co. Mission Statement."

**L. IPC Opens Its First INCREDIBLE PIZZA CO. Restaurant.**

51. In or about August 2002, IPC opened its first restaurant under the name SPRINGFIELD'S INCREDIBLE PIZZA COMPANY in Springfield, Missouri. The SPRINGFIELD'S INCREDIBLE PIZZA COMPANY restaurant offered an all-you-can-eat buffet of pizza, pasta, salad, and dessert, themed dining areas, private party rooms, and a large game and entertainment area with redemption games, video games, and rides.

**M. IPC Begins Offering INCREDIBLE PIZZA CO. Franchises.**

52. On information and belief, in or about September 2003, Barsness formed IPFG and caused IPC to enter into a license agreement purportedly authorizing IPFG to use and sublicense the INCREDIBLE PIZZA CO. mark.

53. On information and belief, in fall 2003, IPFG began offering to franchise, in certain limited territorial areas, restaurant and entertainment centers with an all-you-can-eat buffet, themed dining, private party rooms, and an entertainment area containing games, rides and attractions, operating under the name INCREDIBLE PIZZA COMPANY.

1           54. IPC and IPFG offered INCREDIBLE PIZZA COMPANY franchises  
2 with full knowledge and in willful defiance of JIPC's senior rights and objections.

3 On information and belief, since at least April 2004, the Uniform Franchise  
4 Offering Circular ("UFOC") for the franchises offered by IPC and IPFG has stated:

5           We are aware of a company in California, John's  
6 Incredible Pizza Co., which claims to have operated under  
7 the name "John's Incredible Pizza Co." prior to our use of  
8 our Mark and this company claims to be able to prevent  
9 us from operating or franchising [family entertainment  
10 centers]. John's Incredible Pizza Co. transferred its  
11 trademark rights to JIPC Management, Inc. ("JIPC").  
12 \* \* \* \* JIPC claims to own the service marks "Incredible  
13 Pizza Co.," "John's Incredible Pizza Co." and "John's  
14 Incredible Pizza Co. Al You Can Eat Food & Fun!". It  
15 claims use of its mark since September 1997 and says it  
16 now has five restaurants, which we believe are only in  
17 certain parts of California.

18 **N. IPC Refuses JIPC's Demand that It Cease Use of the INCREDIBLE**  
19 **PIZZA CO. Name.**

20           55. On or about March 16, 2004, attorneys for JIPC sent Barsness and IPC  
21 letters demanding that they immediately cease and desist use of the INCREDIBLE  
22 PIZZA COMPANY, INCREDIBLE PIZZA CO., INC., and SPRINGFIELD'S  
23 INCREDIBLE PIZZA COMPANY names.

24           56. On or about March 31, 2004, IPC, acting through its attorneys,  
25 responded to JIPC's cease and desist letter. In the letter, IPC acknowledged that  
26 multiple JIPC's JOHN'S INCREDIBLE PIZZA CO. restaurants had been operating  
27 in southern California since before September 1999. Notwithstanding this  
28 acknowledgement of JIPC's prior use, IPC refused to cease its own bad-faith use.

1           57. In its letter, IPC also represented that it “currently conducts no  
2 business in the State of California [and] \* \* \* has no current plans to conduct any  
3 business in California either directly or as result of its [contractual relationship with  
4 its franchisee].”

5           **O. JIPC and IPC Engage in Litigation Before the TTAB.**

6           58. On May 21, 2004, JIPC commenced an action before the Trademark  
7 Trail and Appeal Board (“TTAB”) of the USPTO, captioned *JIPC Management,*  
8 *Inc. v. Incredible Pizza Co, Inc.*, Cancellation No. 92043316, seeking cancellation  
9 of IPC’s Registration No. 2,500,872 for the INCREDIBLE PIZZA COMPANY  
10 (and design)<sup>1</sup> (the “Cancellation Action”), based on fraudulent misrepresentations  
11 made by Barsness and IPC in connection with the application to register the mark  
12 and the likelihood of confusion with JIPC’s senior JOHN’S INCREDIBLE PIZZA  
13 CO. mark.

14           59. On or about February 25, 2005, IPC filed Application Serial  
15 No. 78,575,077 to register AMERICA’S INCREDIBLE PIZZA COMPANY (and  
16 design) in connection with “restaurant franchising, namely consultation and  
17 assistance in business management, organization and promotion; franchising,  
18 namely, offering technical assistance in the establishment and/or operation of  
19 restaurants” in IC 35. In her declaration in support of the application, Cheryl  
20 Barsness, as vice president of IPC, stated that to the best of her knowledge and  
21 belief, “no other person, firm, corporation, or association has the right to use the  
22 mark in commerce, either in the identical form thereof or in such near resemblance  
23 thereto as to be likely, when used on or in connection with the goods/services of  
24 such other person, to cause confusion, or to cause mistake, or to deceive.” At the  
25 time she executed her declaration, Cheryl Barsness knew JIPC had been using the  
26 JOHN’S INCREDIBLE PIZZA CO. name for years and had the right to use that

27           <sup>1</sup> On or about October 31, 2003, IPC amended its registration to, among other  
28 things, substitute the wording COMPANY for “CO.”

1 name. Indeed, the specimen submitted with the application showed the cover of a  
 2 UFOC used by IPC to offer franchises of its restaurants under the name

3 INCREDIBLE PIZZA COMPANY. Cheryl Barsness had reviewed and was  
 4 familiar with the contents of UFOC at the time she executed her declaration. As set  
 5 forth above at Paragraph 54, the UFOC disclosed IPC's knowledge of JIPC's use  
 6 and objections.

7 60. On or about October 25, 2005, the USPTO approved the publication of  
 8 the AMERICA'S INCREDIBLE PIZZA COMPANY (and design) mark of  
 9 Application Serial No. 78/575,077 for opposition on December 20, 2005. On April  
 10 19, 2006, JIPC commenced a second action before the TTAB, captioned *JIPC*  
 11 *Management, Inc. v. Incredible Pizza Co, Inc.*, Opposition No. 91170452, opposing  
 12 IPC's Application Serial No. 78/575,077 (the "Opposition Action"), also on the  
 13 grounds of fraud and likelihood of confusion with JIPC's JOHN'S INCREDIBLE  
 14 PIZZA CO. mark.

15 61. Notwithstanding its prior knowledge of JIPC's objection to its use, IPC  
 16 not only continued to use the AMERICA'S INCREDIBLE PIZZA COMPANY  
 17 (and Design) mark in connection with restaurant franchising services, but  
 18 subsequently expanded its use of the mark to include use directly with restaurant  
 19 and entertainment services.

20 62. Since May 2004, JIPC and IPC have been vigorously litigating the  
 21 Cancellation Action and the Opposition Action, which were consolidated for all  
 22 purposes on December 4, 2006.

23 **P. IPC and IPFG Expand into California.**

24 **1. IPC Targets California with Its NASCAR Sponsorship.**

25 63. Before April 2008, JIPC, IPC, and IPFG used their respective marks in  
 26 geographically separate and distinct market areas, with no real competition between  
 27 them. Indeed, on information and belief, before April 2008, neither IPC nor IPFG  
 28 conducted business in California or had undertaken any efforts to extend the

1 reputation of their claimed marks into California, which falls outside their natural  
 2 zone of expansion. JIPC's operations and stores were all located within California  
 3 and the reputation of its INCREDIBLE Marks had not extended into Missouri,  
 4 Texas, Oklahoma or any other state where IPC claimed operation. As a result,  
 5 before April 2008, any claim by JIPC against IPC and IPFG for infringement and  
 6 unfair competition had yet to ripen into a cause of action.

7 64. On or about March 31, 2008, IPC and CJM Racing, LLC ("Racing")  
 8 announced that they had entered into a sponsorship arrangement, pursuant to which  
 9 IPC agreed to sponsor Racing's team entry in the 2008 season of National  
 10 Association for Stock Car Auto Racing ("NASCAR") Nationwide Series<sup>2</sup> of race  
 11 events. A copy of the press release issued by Racing is attached hereto as Exhibit  
 12 9.

13 65. On information and belief, IPC entered into its sponsorship  
 14 arrangement with Racing with the knowledge and intent that Racing would use and  
 15 promote IPC's INCREDIBLE PIZZA COMPANY marks and logos nationally, and  
 16 specifically in California, and expressly licensed Racing to use IPC's  
 17 INCREDIBLE PIZZA COMPANY marks and logos for such purposes. Indeed, the  
 18 announcement came mere weeks after Racing had competed in the Stater Bros. 300,  
 19 a NASCAR race held at the California Speedway, in Fontana, California.

20 66. On information and belief, IPC also entered into the Racing  
 21 sponsorship with the knowledge that only four of the 23 separate venues hosting  
 22 NASCAR Nationwide Series events in 2008 were located within states where IPC-  
 23 owned or franchised stores currently operate and, of those four, three were located  
 24 within the single state of Tennessee.

25 67. On information and belief, not only did IPC agree to sponsor Racing  
 26 with the knowledge and intent that Racing display IPC's marks and logos at events

27  
 28 <sup>2</sup> Prior to 2008, the Nationwide Series was known as the "Busch Series."



1 held in California, Illinois, Wisconsin, New York, New Hampshire, Minnesota,  
 2 Delaware, Virginia, North Carolina, Florida, Georgia, Alabama, Indiana, Kentucky,  
 3 Alabama, Arizona, and Nevada, where there were no operating IPC stores, IPC also  
 4 knew and intended that the NASCAR events Racing competed in outside of  
 5 California were, and would continue to be, broadcast nationally, including  
 6 specifically in California, on the ABC, ESPN and ESPN2 television networks.

7 68. On information and belief, starting on or about April 5, 2008, IPC  
 8 added an IPC Racing page to its Web site at [www.incrediblepizza.com](http://www.incrediblepizza.com). The IPC  
 9 Racing page features photographs of Racing's "No. 11 America's Incredible Pizza  
 10 Company Racing Chevrolet" and team uniforms prominently displaying IPC's  
 11 INCREDIBLE PIZZA COMPANY marks and logos. The HTML source code for  
 12 the IPC Racing page also includes a metatag that includes the keyword phrase  
 13 "Incredible Pizza Company."

14 69. The IPC Racing page posted on IPC's Web site includes a Racing  
 15 2008 Racing Schedule listing each of the events that Racing's "No. 11 America's  
 16 Incredible Pizza Company Racing Chevrolet" and team has participated in or is  
 17 scheduled to appear. A printout of the IPC Racing page is attached hereto as  
 18 Exhibit 10.

19 70. Among the events included on the a Racing 2008 Racing Schedule  
 20 posted on the IPC Racing page of the IPC Web site is Camping World 300, which  
 21 was held within this District at the California Speedway in Fontana, California on  
 22 August 30, 2008.

23 71. The California Speedway is located almost directly in the middle of  
 24 three separate JOHN'S INCREDIBLE PIZZA CO. stores: 13.8 miles east of the  
 25 Montclair store, 19.6 miles northeast of the Riverside store, and 34.2 miles south of  
 26 the Victorville store. A map illustrating the location of the California Speedway  
 27 track in relation to these stores is attached hereto as Exhibit 11.  
 28

1           72. On information and belief, there are currently 63 local chapters of the  
2 Official NASCAR Members Club, NASCAR's sanctioned fan organization, located  
3 in California, including local chapters in cities where there are JOHN'S  
4 INCREDIBLE PIZZA CO. stores such as Victorville, Bakersfield, and Fresno.

5           73. On information and belief, starting on or about April 5, 2008, Racing  
6 began referring to its "No. 11" entry in the NASCAR Nationwide Series in its  
7 publications, press releases, and marketing collateral and on its Web site at  
8 www.cjmracing.com as the "No. 11 America's Incredible Pizza Company Racing  
9 Chevrolet." On information and belief, Racing also began prominently displaying  
10 IPC's infringing INCREDIBLE PIZZA COMPANY marks and logos on Racing's  
11 race cars, team uniforms, and Web site and in Racing's publications, newsletters,  
12 and marketing collateral. Photographs printed out from Racing's Web site  
13 depicting IPC's INCREDIBLE PIZZA COMPANY marks and logos prominently  
14 displayed on Racing's "No. 11 America's Incredible Pizza Company Racing  
15 Chevrolet" and team uniforms are attached hereto as Exhibit 12.

16           74. On information and belief, starting on or about April 5, 2008, Racing  
17 revised the HTML source code for the home page of its Web site at  
18 www.cjmracing.com to include as a keyword metatag the phrase "Incredible Pizza  
19 Company."

20           75. On information and belief, since April 5, 2008, the "No. 11 America's  
21 Incredible Pizza Company Racing Chevrolet" has started in one or more National  
22 Series events broadcast nationally, including in California, on the ABC, ESPN  
23 and/or ESPN2 networks.

24           76. On information and belief, there are at least 50 million NASCAR  
25 Nationwide Series fans in the United States and approximately 38% of NASCAR  
26 Nationwide Series fans have children under 18. On information and belief, in 2006  
27 more than 60,000 fans, on average, attended each Nationwide Series event.  
28

1           77. On information and belief, the number of households tuning in to  
 2 NASCAR Nationwide Series events broadcast on television in 2007 was projected  
 3 to be, on average, 95.1 million per event. On information and belief, the NASCAR  
 4 Nationwide Series was the third highest rated regular season sport on cable  
 5 television in 2006, garnering higher ratings than Major League Baseball, NBA and  
 6 NCAA basketball, PGA Golf, and NHL Hockey. Moreover, the Los Angeles,  
 7 California television market is, on information and belief, among the top 10 largest  
 8 NASCAR Nationwide Series markets in the United States based on the average  
 9 number of households tuning in per event.

10           78. On information and belief, NASCAR.COM, the official NASCAR  
 11 Internet website, boasts nearly four million unique users per month, over 100  
 12 million page views per month, and over 1.2 billion page views per year.

13           **2. IPC and IPFG Begin Offering Franchises in California.**

14           79. In or about May 2008, IPC altered its Web site to add a section titled  
 15 Available Markets to the page that discusses IPC franchise opportunities. The new  
 16 Available Markets section includes a map of the United States and prompts the user  
 17 to "click desired state to view available cities." (Exhibit 13.) Clicking on  
 18 California brings up a listing of 27 cities in California in which IPC franchises are  
 19 available. The list includes several cities, such as Bakersfield, Fresno, Modesto,  
 20 Stockton, and Riverside, where existing JOHN'S INCREDIBLE PIZZA CO. stores  
 21 are located. (Exhibit 14.) By selecting the "Print" button, a list of all 27 California  
 22 cities can be printed on a single sheet with the AMERICA'S INCREDIBLE PIZZA  
 23 COMPANY (and design) logo displayed at the top. (Exhibit 15.)

24           80. The Available Markets section also provides a link to download "a  
 25 printer-friendly list of available markets." Selecting the link downloads a list of  
 26 available cities organized by state. The California section lists the same 27 cities.  
 27 (Exhibit 16.)  
 28

1           81. On information and belief, IPC's Web site can be accessed nationally  
2 and specifically from within California.

3           82. On information and belief, IPC and IPFG are aware that IPC's Web  
4 site can be accessed from within California and, starting in April 2008, it has been  
5 IPC and IPFG's specific intent and purpose to target and solicit potential consumers  
6 of their services in California and to expand the reputation of IPC's INCREDIBLE  
7 PIZZA COMPANY marks and logos into California. Consistent with that intent,  
8 on July 8, 2008, IPFG filed a Notice of Exemption for Internet Advertisement,  
9 dated June 20, 2008, with the California Department of Corporations certifying that  
10 the URL address www.incrediblepizza.com "contains information concerning the  
11 offer and sale of the Company's franchises" and that IPFG agrees to comply with  
12 the California Franchise Investment Law, and the Rules thereunder, "when posting  
13 any communication in connection with the offer and sale of a franchise on a web  
14 site."Likelihood of Confusion.

15           83. IPC and IPFGbegan using the names INCREDIBLE PIZZA CO.,  
16 INCREDIBLE PIZZA COMPANY (with and without Design), AMERICA'S  
17 INCREDIBLE PIZZA COMPANY (with and without Design), and INCREDIBLE  
18 PIZZA.COM (the "IPC Marks") in association with restaurant, entertainment, and  
19 franchise services long after JIPC and its predecessor's first use in commerce of the  
20 INCREDIBLE Marks in association with the sale and promotion of restaurant and  
21 entertainment business and services.

22           84. The IPC Marks are confusingly similar to the INCREDIBLE Marks.

23           85. The goods and services offered by IPC, IPFG, and Racing are the same  
24 as, or substantially related to, the services in connection with which JIPC's  
25 INCREDIBLE Marks have been used.

26           86. JIPC's target audience (families with children 16 or younger) is the  
27 same as IPC's target audience and is a subset of Racing's target audience (stock car  
28 racing fans).

1 87. IPC, IPFG, and Racing's use of the IPC Marks, when used in  
 2 conjunction with restaurant, entertainment, and franchising services, is likely to  
 3 cause confusion among customers as to the source of the services or may cause  
 4 customers to believe that defendants' services sold or promoted in association with  
 5 the IPC Marks are endorsed by, sponsored by, affiliated with, or in some way  
 6 connected to JIPC.

7 **Q. The Harm to JIPC.**

8 88. Defendants are acting without a license or the consent of JIPC and  
 9 have caused, and unless restrained by this Court, will continue to cause, serious and  
 10 irreparable injury to JIPC and to the good will associated with the INCREDIBLE  
 11 Marks.

12 89. Due to defendants' conduct alleged herein, since at least April 2008,  
 13 the infringing IPC Marks have been viewed repeatedly by millions of consumers  
 14 nationwide, including in California, and have caused, and continue to cause, a  
 15 likelihood of confusion and injury to JIPC's right to the exclusive use of the  
 16 INCREDIBLE Marks, as well as to JIPC's valuable goodwill.

17 90. As a result of defendants' infringing and wrongful conduct alleged  
 18 herein, JIPC must undertake corrective advertising to counteract the injury caused  
 19 by defendants' actions.

20 91. JIPC's remedies at law are not adequate to compensate for the injury  
 21 caused by defendants' actions because JIPC is entitled to be in exclusive control of  
 22 the INCREDIBLE Marks as used in association with restaurant, entertainment, and  
 23 franchising services to prevent the likelihood that customers may be confused,  
 24 mistaken, or deceived into believing that the restaurant, entertainment, and  
 25 franchising services advertised and sold by defendants originate with JIPC or are  
 26 endorsed by, sponsored by, affiliated with, or in some way connected to JIPC.

27 92. So long as defendants are allowed to continue the acts complained of,  
 28 JIPC's reputation is at defendants' mercy.

**R. The Willful and Wanton Nature of Defendants' Conduct.**

93. On information and belief, Barsness and/or IPC had actual notice of JIPC's business and JIPC's use of the INCREDIBLE Marks, and the rights claimed by JIPC in said marks before the dates on which Barsness and/or IPC filed their applications with the USPTO to register the INCREDIBLE PIZZA CO. (and design) and AMERICA'S INCREDIBLE PIZZA COMPANY (and design) marks.

94. On information and belief, Barsness, IPC, and IPFG had actual notice of JIPC's business and JIPC's use of the INCREDIBLE Marks, and the rights claimed by JIPC in said marks before the dates on which Barsness and/or IPC began using the names INCREDIBLE PIZZA CO., AMERICA'S INCREDIBLE PIZZA COMPANY, and INCREDIBLE PIZZA.COM.

95. Despite actual notice to defendants, defendants continue to promote and sell services in association with the INCREDIBLE PIZZA CO., AMERICA'S INCREDIBLE PIZZA COMPANY, and INCREDIBLE PIZZA.COM marks, in violation of JIPC's exclusive rights to the INCREDIBLE Marks.

96. On information and belief, defendants actions and conduct in entering into, and in furtherance, of the Racing sponsorship were undertaken in bad faith and with the intention or purpose to forestall and/or limit JIPC's extension of its INCREDIBLE Marks beyond JIPC's current geographic territory and/or to damage or weaken the value and strength of the INCREDIBLE Marks and/or JIPC's federal and state registrations for the same.

97. Accordingly, defendants' conduct alleged herein has been, on information and belief, willful, wanton, intentional, and designed to cause confusion, deception, or mistake.

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**FIRST CAUSE OF ACTION**

**FEDERAL TRADEMARK INFRINGEMENT**

98. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

99. Defendants' actions described herein constitute infringement of JIPC'S trademark registrations identified in Paragraph 7 above, in violation of the Lanham Act, 15 U.S.C. §§ 1114-1118.

**SECOND CAUSE OF ACTION**

**FEDERAL UNFAIR COMPETITION**

100. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

101. Defendants' acts constitute unfair competition under Section 43(a)(1) of the Lanham Act (15 U.S.C. § 1125(a)(1)).

**THIRD CAUSE OF ACTION**

**STATE TRADEMARK INFRINGEMENT**

102. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

103. Defendant's actions described herein constitute infringement of JIPC'S trademark registrations identified in Paragraph 8 above, in violation of California Business and Professions Code §§ 14245 and 14250.

**FOURTH CAUSE OF ACTION**

**COMMON LAW TRADEMARK INFRINGEMENT**

104. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

105. Defendant's actions described herein constitute infringement under the common law of JIPC'S trademarks identified in Paragraph 11 above.

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**FIFTH CAUSE OF ACTION**

**ATTORNEYS' FEES – EXCEPTIONAL CASE**

106. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

107. This claim for attorneys' fees is brought pursuant to the Lanham Act, 15 U.S.C. § 1117(a).

108. Barsness and IPC's fraudulent conduct before the USPTO renders this case exceptional, entitling JIPC to its reasonable attorneys' fees as the prevailing party.

109. Defendants' willful and bad-faith infringement of JIPC's the INCREDIBLE Marks and unfair competition render this case exception, entitling JIPC to its reasonable attorneys' fees as the prevailing party.

**SIXTH CAUSE OF ACTION**

**STATE TRADE NAME INFRINGEMENT**

110. JIPC incorporates the allegations stated in Paragraphs 1-96 above as though fully set forth herein.

111. Defendant's actions described herein constitute infringement of JIPC'S trade name rights in JOHN'S INCREDIBLE PIZZA CO., in violation of California Business and Professions Code §§ 14402 and 14145.

**PRAYER FOR RELIEF**

WHEREFORE, JIPC prays that this Court enter a judgment as follows:

A. Declaring that JIPC owns valid and subsisting trademark rights in the INCREDIBLE Marks and trade name rights in the JOHN'S INCREDIBLE PIZZA CO. name;

B. Declaring that JIPC has superior and exclusive rights in the INCREDIBLE Marks;

C. Declaring that defendants be held liable under each claim for relief set forth in JIPC's causes of action;

1 D. Declaring that defendants' trademark and trade name  
2 infringement and unfair competition have been willful;

3 E. Declaring that this case be declared exceptional pursuant to 15  
4 U.S.C. § 1117(a);

5 F. Ordering that defendants, their agents, servants, employees,  
6 attorneys, successors, assigns, and all other persons, firms, and corporations  
7 acting in concert or in participation with defendants be preliminarily and  
8 permanently enjoined from

- 9 (1) using in any manner the INCREDIBLE Marks or a  
10 colorable imitation thereof more than 25 miles from a  
11 currently operating IPC-owned or -franchised store;  
12 (2) using in any manner any other mark that is confusingly  
13 similar to the INCREDIBLE Marks more than 25 miles  
14 from a currently operating IPC-owned or -franchised store;  
15 (3) notwithstanding (1) and (2) above, using in any manner  
16 the INCREDIBLE Marks or a colorable imitation  
17 therefore or any other mark that is confusing similar to the  
18 INCREDIBLE Marks within the same state as or within  
19 100 miles of any operating JOHN'S INCREDIBLE  
20 PIZZA CO. store or any location leased by JIPC or one of  
21 its affiliate or licensees for the purposes of opening a  
22 JOHN'S INCREDIBLE PIZZA CO. store;  
23 (4) infringing JIPC's trademark and trade name rights  
24 identified herein; and  
25 (5) committing unfair competition and unfair business  
26 practices as detailed herein;

27 G. Ordering that defendants file with this Court and serve on JIPC  
28 in accordance with 15 U.S.C. § 1116, within 30 days after service on

1 defendants of such injunction (or such extended period as this Court may  
 2 direct), a report in writing and under oath, setting forth in detail the manner  
 3 and form in which defendants have complied with this injunction;

4 H. Ordering that in accordance with 15 U.S.C. § 1118, defendants  
 5 deliver up to JIPC for destruction or other disposition all goods, labels, signs,  
 6 prints, packages, equipment, uniforms, wrappers, advertisements, business  
 7 forms, letterheads, and promotional materials bearing or displaying the  
 8 INCREDIBLE Marks, or any other term similar to the INCREDIBLE Marks  
 9 so as to be likely to cause confusion, deception, or mistake, in defendants'  
 10 possession, custody, or control (and to recall for such purpose any such  
 11 products and materials in the possession, custody, or control of any other  
 12 person), as well as any reproduction, counterfeit, copy, or colorable imitation  
 13 thereof, located more than 25 miles from a currently operating IPC-owned or  
 14 -franchised store or within the same state as or within 100 miles of any  
 15 operating JOHN'S INCREDIBLE PIZZA CO. store or any location leased by  
 16 JIPC or one of its affiliates or licensees for the purposes of opening a  
 17 JOHN'S INCREDIBLE PIZZA CO. store;

18 I. Ordering that defendants be required to account for and pay to  
 19 JIPC all profits wrongfully derived by defendants through their unlawful acts  
 20 set forth herein, together with prejudgment interest from the date of accrual  
 21 thereof;

22 J. Ordering that defendants be required to pay to JIPC an amount  
 23 sufficient to compensate JIPC for all damages caused by defendants through  
 24 their unlawful acts set forth herein, including but not limited to JIPC's actual  
 25 and prospective costs for corrective advertising, together with prejudgment  
 26 interest from the date of accrual thereof;

27 K. Ordering that because of the intentional and/or willful nature of  
 28 defendants' infringement, and pursuant to 15 U.S.C. § 1117, defendants be

1 required to pay JIPC three times the amount of JIPC's damages and/or IPC's  
2 profits;

3 L. Ordering that defendants be required to pay to JIPC its  
4 reasonable attorneys' fees and disbursements incurred herein, pursuant to 15  
5 U.S.C. § 1117, California law, and/or the equity powers of this Court;

6 M. That defendants be required to pay JIPC punitive damages as a  
7 consequence of the willful and wanton acts alleged herein; and

8 N. Ordering that defendants be required to pay JIPC the costs of  
9 this action; and

10 O. That this Court award JIPC such other and further relief as this  
11 Court may deem just and appropriate.

12 **DEMAND FOR JURY TRIAL**

13 Pursuant to Fed. R. Civ. P. 38 and Rule 38-1 of the Local Rules of the U.S.  
14 District Court for the Central District of California, JIPC hereby demands a jury  
15 trial on all issues triable to a jury.

16 DATED: October<sup>20</sup>, 2008.

RUTAN & TUCKER, LLC

17 By: /s/ Ronald P. Oines

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26  
27  
28